

**MINUTES  
URBAN COUNTY PLANNING COMMISSION  
SUBDIVISION ITEMS**

**December 8, 2011**

- I. **CALL TO ORDER** - The meeting was called to order at 1:31 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission Members Present – Mike Cravens, Chair; Mike Owens; Marie Copeland; Frank Penn; Eunice Beatty; Carla Blanton; Derek Paulsen (departed at 4:16 PM); Lynn Roche-Phillips; William Wilson; Will Berkley (arrived at 1:33 PM) and Patrick Brewer.

Planning Staff Present – Chris King, Director; Bill Sallee; Barbara Rackers; Jimmy Emmons; Tom Martin; Cheryl Galt; Chris Taylor; Denice Bullock; Traci Wade and Araba Prah. Other staff members in attendance were: Steve Parker, Division of Engineering; Jeff Neal, Division of Traffic Engineering; Captain Charles Bowen, Division of Fire & Emergency Services; Tim Queary, Division of Streets, and Roads and Forestry; Rochelle Boland, Department of Law and Billy Van Pelt, Purchase of Development Rights.

- II. **APPROVAL OF MINUTES** – The Chair reminded the members that the revised Planning Commission meeting minutes of October 27, 2011, had been previously distributed to the Commission, and were ready to be considered at this time.

Action - A motion was made by Mr. Owens, seconded by Mr. Paulsen and carried 10-0 (Berkley absent) to approve the revised minutes of the October 27, 2011, meeting.

- III. **POSTPONEMENTS OR WITHDRAWALS** – Requests for postponement and withdrawal will be considered at this time.

- a. DP 2011-97: LIGGETT & COMPANY (1/29/12)\* - located at 1211 Manchester Street.  
(Council District 2) **(J.E. Black)**

Staff Comments – Mr. Emmons said that the staff had received an email correspondence from the applicant, requesting that DP 2011-97 be postponed to the January 12, 2012, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Ms. Beatty, seconded by Mr. Wilson, and carried 10-0 (Berkley absent) to postpone DP 2011-97 to the January 12, 2012, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, December 1, 2011, at 8:30 a.m. The meeting was attended by Commission members: Frank Penn, Derek Paulsen, Eunice Beatty, Mike Owens and Marie Copeland. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jim Gallimore, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Galt, Chris Taylor, Jimmy Emmons, Traci Wade and Barbara Rackers, as well as Captain Charles Bowen, Division of Fire & Emergency Services and Rochelle Boland, Law Department. The Committee made recommendations on plans as noted.

*General Notes*

*The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.*

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- A. **CONSENT AGENDA - NO DISCUSSION ITEMS** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

**Criteria:**

- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
- (2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
- (3) no discussion of the item is desired by the Commission; and
- (4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
- (5) the matter does not involve a waiver of the Land Subdivision Regulations.

**Requests can be made to remove items from the Consent Agenda:**

- (1) due to prior postponements and withdrawals,
- (2) from the Planning Commission,
- (3) from the audience, and
- (4) from Petitioners and their representatives.

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\* - Denotes date by which Commission must either approve or disapprove plan.

At this time, the Chair requested that the Consent Agenda items be reviewed. Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of these items. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. PLAN 2011-128F: LOUDON PARK, BLOCK 17, LOT 11 & WESTERLY ½ OF 13 (1/29/12)\* - located on Breckenridge Street. (Council District 1) **(Foster – Roland, Inc.)**

Note: The purpose of this amendment is to subdivide one lot into two lots.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
  2. Urban County Traffic Engineer's approval of street cross-sections and access.
  3. Building Inspection's approval of landscaping.
  4. Addressing Office's approval of street names and addresses
  5. Urban Forester's approval of tree protection area(s) and required street tree information.
  6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
  7. Show dashed lines for adjacent property.
  8. Correct lot numbers to match previous plat (Cabinet E, Slide 30).
  9. Addition of required subdivision notes (per Article 5-4(g)).
  10. Delete landscape data and tree canopy note.
  11. Addition of building line (20') (per Article 8-12(o)(5) of the Zoning Ordinance).
  12. Revise Urban County Engineer's Certification to the approval of the Division of Engineering.
2. PLAN 2011-129F: SOUTH ELKHORN VILLAGE (1/29/12)\* - located at 4379 Old Harrodsburg Road. (Council District 10) **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
  2. Urban County Traffic Engineer's approval of street cross-sections and access.
  3. Building Inspection's approval of landscaping.
  4. Addressing Office's approval of street names and addresses
  5. Urban Forester's approval of tree protection area(s) and required street tree information.
  6. Department of Environmental Quality's approval of environmentally sensitive areas.
  7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
  8. Denote: This property shall be developed in accordance with the approval final development plan.
  9. Denote source of and correct floodplain information.
  10. Addition of conditional zoning restrictions.
  11. Delete note #5.
3. DP 2011-95: NEWTOWN SPRINGS (TRILOGY LEXINGTON HEALTH CAMPUS #3) (1/29/12)\* - located at 564 Asbury Lane (a portion of). (Council District 2) **(Strand Associates)**

The Subdivision Committee Recommended: **Approval**, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
  2. Urban County Traffic Engineer's approval of street cross-sections and access.
  3. Building Inspection's approval of landscaping and landscape buffers.
  4. Addressing Office's approval of street names and addresses.
  5. Urban Forester's approval of tree protection plan.
  6. Division of Fire's approval of emergency access and fire hydrant locations.
  7. Division of Waste Management's approval of refuse collection.
  8. Denote significant trees, if any, on the site.
4. DP 2011-101: TATES CREEK CENTER, LOT 1 (FORMERLY BELLEAU WOODS SHOPPING CENTRE) (AMD) (2/21/12)\* - located at 4192 Tates Creek Center Drive. (Council District 4) **(Civil & Environmental Consultants)**

Note: The purpose of this amendment is to add 769 gross square feet to Lot 1.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Building Inspection's approval of site statistics, landscaping and landscape buffers.
2. Revise plan title.
3. Addition of name and address of Lot 1 developer in title block.
4. Addition of "TPP for B-6P Area" information from previous plan.

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5. Denote: Exterior elevations were provided for Kroger store expansion on previous development plan (certified on 8/15/11), and are still applicable.
5. DP 2011-102: INGLESIDE APTS. (AMD) (2/21/12)\* - located at 1035 Red Mile Road.  
(Council District 11) **(Vision Engineering)**

Note: The purpose of this amendment is to add 3 dwelling units in the P-1 zone and to revise parking.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Correct required parking in P-1 site statistics.
8. Revise Planning Commission certification date.
9. Revise purpose of amendment note to include parking changes proposed.
10. Denote: This plan supersedes DP 2011-48.
11. Withdrawal of unrecorded record plat (PLAN 2009-70F) prior to plan certification.
12. Correct conditional zoning note.
13. Document compliance with P-1 open space requirement (per Article 8-15(k)) for the dwelling units.
14. Review by Technical Committee prior to certification.

In conclusion, Mr. Sallee said that the items listed on the Consent Agenda could be considered for conditional approval at this time by the Commission, unless there was a request for an item to be removed from consideration for discussion purposes.

Consent Agenda Discussion – The Chair asked if anyone in the audience or on the Commission desired further discussion of any of the items listed on the Consent Agenda. There was no response.

Action - A motion was made by Mr. Penn, seconded by Mr. Brewer, and carried 10-0 (Berkley absent) to approve the items identified on the Consent Agenda.

- B. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for consideration of these remaining plans is as follows:

- Staff Report(s)
- Petitioner's Report(s)
- Citizen Comments – (a) in support of the request, and (b) in opposition to the request
- Rebuttal – (a) petitioner's comments, (b) citizen comments, and (c) staff comments
- Commission discusses and/or votes on the plan

# **1. DEVELOPMENT PLANS**

- a. DP 2011-96: CHINOE VILLAGE SHOPPING CENTER (AMD) (1/29/12)\* - located at 1050 Chinoe Road.  
(Council District 5) **(The Roberts Group)**

Note: The purpose of this amendment is to revise the layout of the gas station.

The Subdivision Committee Recommended: **Referral to the full Commission**.

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Denote: The existing landscaping and trees along Creekwood Drive shall be retained.
9. Discuss height of proposed canopy.
10. Discuss lighting restrictions related to off hours.
11. Discuss traffic movement, need for drive aisles and canopy setback to the approval of Traffic Engineering.
12. Addition of original ZDP restrictions from DP 83-151.

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Staff Presentation – Mr. Taylor identified this amended final development plan on the agenda, and noted that the subject property is located at 1050 Chinoe Road. He presented a rendering of this plan and oriented the Commission to the general vicinity. He said that the subject property is south of Alumni Drive, north of the New Circle Road overpass and is located at the corner of Chinoe Road and Creekwood Drive. He noted that the purpose of this amendment is to revise the layout of a new gas station.

Mr. Taylor said that there are multiple existing access points into the shopping center. He indicated that there are two existing entrances off Chinoe Road and three entrances off Creekwood Drive. One of those three is to the rear of the Kroger store, which is used as an unloading zone. He said that the applicant is proposing to build a 108 square-foot kiosk with a restroom, as well as a canopy that will cover 5 fueling stations, with a total of 10 gas pumps proposed.

Mr. Taylor said that the previous development plan was certified in 2002, and that approval would have allowed 3 fueling stations (and 6 gas pumps). However, the applicant did not seek building permits within a five-year time frame, which meant either the original plan needed to be reapproved or a new plan submitted. He said that the applicant chose to submit a new development plan that altered the proposed layout of the site.

Mr. Taylor said that the Subdivision Committee made a recommendation to refer this item to the full Commission, but subject to the conditions recommended by the Technical Committee. He briefly explained that conditions #1 through #7 are standard sign-off conditions from the different divisions of the LFUCG, and noted that several "clean-up" conditions previously identified had been addressed.

Mr. Taylor briefly explained the remaining conditions #8, 9, 10 and 11, and said that there was an initial concern with the proposed access and circulation throughout the shopping center, the existing drive aisles being removed, and the new canopy's setback from Creekwood Drive. He noted that the 4-way intersection near Building C will need to be modified to more clearly delineate how the traffic will move through this central area of the shopping center.

Mr. Taylor directed the Commission's attention to an aerial photograph of the subject site, and said that there is an existing row of shrubs and trees along Creekwood Drive, and the staff is recommending that this landscape material be retained. He noted that the site does slope toward Kroger and it is required that the tanks be placed on level ground. The applicant will need to build a retaining wall along Creekwood Drive to achieve this.

Note: Mr. Berkley arrived at this time.

Mr. Taylor said that since the Subdivision Committee meeting, the applicant had submitted a revised development plan, which addressed most of the issues. However, there are outstanding discussion items remaining. He then said that with the review of that submission, the staff can now offer the following recommendation.

The Staff Recommended: Approval, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. ~~Document vehicular use area screening compliance.~~ Denote: The existing landscaping and trees along Creekwood Drive shall be retained.
9. ~~Addition of graphic scale.~~
10. ~~Addition of typical parking dimensions.~~
11. ~~Denote drive aisle widths.~~
12. ~~Addition of erosion control plan note.~~
9. 13. ~~Denote~~ Discuss height of proposed canopy.
10. 14. Discuss lighting restrictions related to off hours.
11. 15. Discuss traffic movement, need for drive aisles and canopy setback to the approval of Traffic Engineering.
16. ~~Discuss exterior building materials for proposed kiosk.~~
12. 17. ~~Discuss~~ Addition of original ZDP use restrictions from DP 83-151.

Planning Commission Questions – Mr. Owens asked where the 3' retaining wall will be located. Mr. Taylor illustrated on the rendered drawing the location of the 3' retaining wall.

Mr. Penn asked when this development plan was originally approved. Mr. Taylor said that the Commission had approved the development plan in 2001 and it was certified in 2002. He then said that the development plan allowed for six pumps, noting that the canopy setback was 30' further back than what is being proposed at today's

meeting. Mr. Penn asked why the setback is being moved forward. Mr. Taylor deferred the question to the applicant, noting that the applicant could have requested a reapproval of the original development plan. Instead, they chose to revise the latest development plan layout for this facility.

Ms. Roche-Phillips asked if the necessary environmental permits were obtained for the underground storage tanks. Mr. Taylor said that is a part of the approval for a building permit and he could not speak to that, since that would have gone through the permitting process for construction.

Representation – Bob Cornett, The Roberts Group, along with Joe Hamilton, Kroger Engineer and Todd Metzmeier, Kroger Real Estate, were present. Mr. Cornett briefly described the history of this shopping center, and said that prior to Kroger moving into this shopping center, it was occupied by a Winn Dixie grocery store. He then said that when Kroger had taken over this site, they had constructed the pharmacy drive-through and additional loading docks in the rear. At that time, Kroger gas stations were fairly new, but the previously approved development plan had shown 3 pump aisles (6 dispensers).

Mr. Cornett said that studies have shown that a 5-pump aisle layout is more efficient when reviewing the cost and return on an investment. He then said that the revised submittal is proposing a shorter canopy wall on the opposite side of Creekwood rather than the length of the parking lot. As the site is proposed, the layout of the gas station would have the least impact on the shopping center's parking. He said that the current parking status for the shopping center is in compliance with the applicable codes.

Mr. Cornett said that they took the suggestion and comments from the Subdivision Committee and staff, and they are proposing the color scheme for the canopy to be earth tones, with the kiosk to be built of brick. He then said that the proposed canopy will be 19' in height, with a 3.5' band extending downward, which would place the recessed lights at 15.6' above the concrete pad. In speaking with Kroger's fuel carrier (SPG), if required, the canopy could be lowered to 14.6', which would decrease the height of canopy by 1' making it 18' instead of 19'.

Mr. Cornett said that the canopy lights are recessed lights, which are not mounted on the surface of the structure, but are placed up inside the canopy. He then said that the wattage of the bulbs will not be bright and will be positioned downward over the dispensing units.

Mr. Cornett said that their landscape architect had investigated the site, and noted that the existing trees are Bradford Pears and there is a row of Burning Bushes along Creekwood Drive. He then said that they are proposing to keep the existing landscaping and trees, and they intend to fill in the remaining areas. To help save the mature trees, they will reduce the drive aisle width between the canopy and retaining wall by 5' to generate more greenspace area. This will also help to protect the root zones in this area. He noted that should any of the Bradford Pear Trees need to be removed as a result of the construction, Kroger has agreed to replace those with an appropriate species that will be 3" in diameter.

Mr. Cornett then said that there was a concern with the noise that would be generated from the pump aisles, and noted that the volume on the pump aisles can be controlled from inside the kiosk or disabled all together. He then said that Kroger is investigating a different type of speaker set that could be used for this location; but at this time, it has not been determined. He added that instead of placing a hand rail behind the wall along Creekwood Drive, they are suggesting a decorative fence, such as wrought iron fence.

Mr. Cornett said that, at the Subdivision Committee, he had misspoken about the gas station lights. He said that, in speaking with SPG, the two lights over the kiosks will remain on after hours for security purposes; but the lights on the dispensers will be turned off.

In conclusion, Mr. Cornett said that they believe this is a good development for this site. He said that the reason they are relocating the gas station is to minimize the impact on the loss of parking for the shopping center. They have proposed a different color scheme for the canopy, and have located the shorter side toward Creekwood Drive, which should give the area more residential community feel.

Planning Commission Questions – Ms. Blanton asked how many parking spaces will be lost with this proposal. Mr. Cornett said that this site will lose 38 parking spaces. He then said that this development is a Planned Shopping Center (B6-P) zone, which is a square footage of parking area requirement, not a minimum number of spaces.

Ms. Blanton said that she was concerned with increasing the traffic in this shopping center and asked if any traffic studies have been completed. Mr. Cornett said that they have not done a traffic study for this area. He then said that Chinoe Road is not a major arterial street, and the users of this gas station will likely be the people who already travel in this area. He noted that they have determined that at least 40% of Kroger gas sales are from people who have made a purchase inside the grocery store on the same day.

Mr. Owens asked what will be the hours of operation for the gas station. Mr. Cornett said that the gas station will have the same hours as the Kroger store, 6 AM to 11 PM. Mr. Owens then asked if there is the possibility of the

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store hours changing to be open 24 hours a day. Mr. Cornett replied negatively, and said that if that were to happen the gas station would still close at 11 PM.

Ms. Beatty said that the Subdivision Committee had discussed the location of existing gas stations within the general vicinity, and asked if a study had been done to determine whether or not this gas station was needed. Mr. Cornett said that, based upon Kroger's marketing studies, there is a need for this gas station for this area; otherwise, they would not propose to spend this kind of money. He then said that the Commission had just approved a development plan (DP 2011-101: TATES CREEK CENTER, LOT 1) on today's Consent Agenda to close the gas station in Tates Creek Center for a new branch bank. This proposal will essentially replace those pumps that will be lost.

Ms. Copeland asked if Kroger would go on record to denote on the development plan that the footcandle level, the decibel level and the lights will be limited, as well as maintaining the trees, which includes preventative maintenance. She then suggested that a brick wall should be constructed on top of the retaining wall for additional screening and safety. Mr. Cornett said that they can add the maintenance of the trees, as well as the hours of operation for the lights on the development plan. He then said that as for the brick wall on top of the retaining wall, that issue would need to be reviewed with his clients. He indicated that, as part of their submittal, a light level schematic was given to the staff that showed the footcandle envelope on this proposal. He said that based upon the slope of the area, they are limited to a 22.8-footcandle envelope at the center of the canopy; along the perimeter it would be limited to a 1.5-footcandle envelope or less within 15' of the canopy. Ms. Copeland asked what can be done with the decibel level. Mr. Cornett said that the volume of the speakers can be controlled from inside the kiosks, or, if necessary, they could completely disable the speakers. Ms. Copeland commented that she is trying to get a legal agreement concerning the decibel level. Mr. Cornett said that they will place any of these binding elements, limitations or restrictions on the development plan.

Mr. Paulsen said that his family is familiar with this area and there is quite a bit of traffic using Chinoe Road. He then said that it was mentioned that 40% of people purchase their gas on the same day as they purchase their items from inside the store. He asked: 1) if their marketing studies show the current level of traffic and the potential impact for traffic on this area; 2) if they are expecting more people to shop at this store with this proposed request; and 3) if they anticipate a traffic signal being needed; and, if so, where the signal would be located. Mr. Cornett said that as far as a traffic signal being installed in this area, Kroger would not want or request that to be done. He then said that with regards to a traffic study, they have not done one. Mr. Paulsen said that there are two other Kroger stores in the general vicinity. He asked how many people currently shop at this store, and what type of increase in shoppers are they anticipating. Mr. Metzmeier said that he is unaware of the numbers for the other Kroger locations; but at the Chinoe Kroger location, it averages about 13,500 customers every week. He then said that their main objective with this proposal is to serve the existing customers and allow them a way to redeem their fuel points. He indicated that they are anticipating a 2 to 5 percent increase in customer turnout.

Mr. Paulsen estimated that there may be 675 more customers at this location, and this is a lot of expense for severing only existing customers. Mr. Metzmeier replied that it is an additional expense to serve existing customers; however, they strongly believe in the "convenience factor" to allow their customers to use the points that they have earned without traveling to another location. He said that they are hoping the amount of sales per transaction will increase with the fuel station being on site.

Ms. Copeland asked for the location of the largest Kroger stores in Lexington. Mr. Metzmeier said that the two Kroger Market Place Stores on Richmond Road and Beaumont Center are similar in size. Ms. Copeland then asked how many fueling stations each store has. Mr. Metzmeier said that the Richmond Road location has 7 pump aisles (14 dispensers) and the Beaumont location has 5 pump aisles (10 dispensers). Ms. Copeland said that these two stores are at least twice the size of Chinoe Road, perhaps 3 times more. Mr. Metzmeier said that the sizes are close. Ms. Copeland believed this to be "overkill" compared to the other locations and the number of pumps being requested. Mr. Metzmeier said that, due to the size of the outlot, the Richmond Road fueling station could not hold more than 7 pump aisles. He then said that the Beaumont Center fueling station is a work in progress, and they have leased another site in the shopping center to relocate the fueling station, which will then be enlarged. Ms. Copeland asked if the square footage for the Chinoe Road store will be increased. Mr. Metzmeier replied negatively.

Mr. Owens asked what the height of the retaining wall will be. Mr. Cornett said that it will be roughly 3 feet or less. He said that if the retaining wall is less than 3 feet in height, the restrictions decrease, and there will be less damage to the root ball system of the mature trees.

Ms. Roche-Phillips asked what permits his clients have obtained for the underground storage tanks. Mr. Cornett said that for permitting fuel there is no local approval per se; but they do have to install a trench drain around the canopy area, which will need approval by the Division of Environmental Quality. He then said that the State Fire Marshall's Office will need to approve the underground storage tank installation. Ms. Roche-Phillips asked if these permits have been obtained. Mr. Cornett replied negatively, and said that they would not apply for those permits until they know the Commission's decision. Ms. Roche-Phillips asked if there are other State level agencies, such

as the Division of Water Quality, that need to approve these tanks, to which Mr. Cornett replied negatively. Ms. Roche-Phillips then asked if the underground tanks are single or double lined. Mr. Cornett said that these tanks are double-lined fiberglass tanks completely embedded in stone with a monitoring system for any type of leak 24 hours a day, 7 days a week. He explained how the underground tanks are monitored, and noted that should there be a leak in the system, Kroger is notified through an alarm. He then said that leaks cost money considering the price of fuel, as well as an inventory control issue, not to mention environmental problems that could happen.

Mr. Owens asked for a brief explanation of the light level schematic previously submitted to the Commission. Mr. Cornett said that every light fixture has a particular pattern for emitting light. For example, there is a difference in how a flood light emits light versus how a spot light emits light. He then said that placement of each of these commercial light fixtures is done through IES photometric testing, which is software that determines point by point analysis as to how the intensity of a light fixture will reflect. The fixtures that will be used over the pumps are 250-watt fixtures, and over the dispensers for the panels will be a 70-watt focus light or spot light. He explained the different measurements of the footcandles shown on the overhead projector, using a schematic submitted earlier to the staff.

Ms. Copeland asked how the traffic will move through this site, particularly box trucks. Mr. Cornett said that in the most likely scenario, traffic would turn directly off Chinoe Road into the shopping center. There are two ways for traffic to exit the fueling station; either off Chinoe Road or off Creekwood Drive to Chinoe Road. Ms. Copeland asked for a specific path as to how traffic could move to purchase fuel. Mr. Cornett illustrated on the rendering the different scenarios that could be used. Ms. Copeland said that the lower end of the canopy was only 14' high and asked if this could be decreased further along Creekwood Drive. Mr. Cornett said that there are standards that they must comply with in order to accommodate the height of the tanker trucks that will be moving under the canopy. Ms. Copeland said that she understood Mr. Cornett's explanations, adding that the height of the canopy still seemed very high.

Audience Comments – The Chair asked if anyone in the audience wished to discuss this request; and if so, each person would have a maximum of three minutes to voice their concerns or comments. Mr. Sallee said that the staff had received several emails from the area and a letter from the Urban County Council Office, noting that the staff had previously distributed those items to the Commission.

Bruce Thomas, residing at 1063 Chinoe Road, was present. He said that he is concerned with the property values in this area decreasing and his investment is his home. He then said that he understands that the Planning Commission volunteers their time and they do what is best for the community; however, no Commission member would want this in their front yard, nor do the residents of this area. He listed several issues of concern such as lighting, environmental noise pollution, noting that no traffic study has been done, and there is a concern with the potential increase of traffic accidents. He then said that the increased traffic would lead to a traffic signal, which would back up traffic even more on Chinoe Road. He said that he doesn't believe there is a need for another gas station in this area with 10 pumps, since there are already 6 gas stations within a 2-mile radius of this Kroger store. He said that it was mentioned there would be landscaping provided; however, the size of the new trees they are proposing would take up to 20 years to mature. Mr. Thomas requested that the Commission consider what is good for the neighborhood and not just what is good for Kroger.

Jennie Willson, 1065 Chinoe Road, was present, and noted that her family has lived in this area for 12 years. She said that she learned of this proposal two weeks ago and wished there was more time to inform the neighbors who are not aware of this proposal. She then said that her family's equity is in their home and there are houses on Chinoe Road that have been for sale a long time. She said she was concerned that with the amount of housing in Lexington, buyers will not want to purchase a home with this type of development near them. She asked the Commission to consider a smart development, which should be based upon the property values, in order to maintain the stability of the neighborhood.

Ms. Willson said that Kroger indicated that they will add trees and will use brick to disguise the gas station, and block out the light, but this bothers her because they act like this is a compromise on their behalf. She then said that there has been no mention of the landscaping being added to Chinoe Road. There were trees removed that have never been replaced.

Ms. Willson said that there is also a concern with the crime rate increasing and the neighborhood deteriorating further with a gas station. She noted that her vehicle was vandalized, as was a neighbor's property. She then said that a gas station would not be good to keep the charm of the neighborhood. Additionally, there are environmental and health concerns that go along with a gas station. She said that they asked a Kroger representative how many spills or fires were associated with Kroger, and he had indicated that there was one. However, in researching this issue, she found there have been numerous accidents associated with Kroger. She understood that this is a business, but this is her neighborhood where her home is located and she felt they deserve answers to their questions.

In conclusion, Ms. Willson said that she appreciated the Commission's question concerning the traffic, and requested that the Commission members visit the area to see how close the houses are before making their final consideration. She said that this area is very unique and the Planning Commission has the opportunity to continue to enrich the charm of Lexington. There are 6 gas stations in the general vicinity and there is no need for another gas station. She said that she wants to retain her home's equity and the charm of the area.

Bill Willson, 1065 Chinoe Road, was present. He directed the Commission's attention to the rendering, and said that he lives directly across from the shopping center and there are houses down Creekwood Drive. The proposed rendering shows the Kroger development, but it does not show the houses that surround the development. He said that the 3-foot shrubs will not block out the 18-foot canopy or the lights coming from the gas station.

Mr. Willson asked that the Planning Commission make their decision based on today's information, and not what was going on in Lexington or what was previously approved in 1981. He said that many things have changed since 1981, and he is requesting that: 1) a traffic impact study be done on this area; and 2) a study showing the impact on property values, if this proposal is approved. He added that he strongly opposes this request.

Betsy Karns, 3500 Creekwood Drive, was present. She said that she strongly opposes a gas station in the Chinoe Shopping Center. She then said that the gas station would be a disaster for the area and residents. This shopping center is much smaller than either the Hartland or the Beaumont Shopping Centers. She said that Creekwood Drive is a small dead end street and there is already more traffic on this street than there should be. She then said that over the last few years, the traffic on Chinoe Road has increased as well. She asked that the Planning Commission consider this shopping center as being unique compared to the other Kroger stores in the area.

Rick Fox, 3501 Colt Neck Lane, was present. He noted that his home is 2 blocks from the Chinoe Shopping Center. He said that there will not be a direct impact on his property; however, there will be an overall impact to the area. He indicated that the speed limit on Colt Neck Lane is 25 mph, but the traffic moves at 35 mph. He added that traffic does not fully stop at the stop sign leading to Chinoe Road. There have been multiple mailboxes vandalized, not to mention a light post in the area. He said that this is a neighborhood shopping center, not a major shopping center where a gas station is being proposed. He asked the Planning Commission to consider how they would feel if a gas station was placed near their homes.

Dimitra Kaftani, 3516 Creekwood Drive, was present. She said that she learned of this proposal through her neighbor and feels that it was inappropriate not to notify the residents in this area of Lexington. She then said that she was concerned with the city not making people aware of major changes happening in their neighborhood.

Ms. Kaftani said that this proposal will create a major fire hazard for this area. She then said that she is concerned with the possibility of a truck tearing down the canopy, resulting in an explosion at the gas pump. She asked if there are studies done showing the quality of the soil surrounding the tanks, and whether or not the soil could hold the gas tanks.

Ms. Kaftani does not consider this shopping center to be a "business district" like Tates Creek Center, and she wants to know what the projected profits would be if a gas station were built. She said that the neighborhood needs to see the specifics as to why and how they are approaching this type of expansion.

Rosie Mandia, 1045 Chinoe Road, was present. She said that she is at the Kroger store multiple times a week, and throughout the years there have been a number of times that she had to slam on her brakes to prevent a collision with another car. She is concerned with the safety of this area if the traffic is increased. She said that she is also concerned with the properties being vandalized even more as a result of foot traffic.

John Piccoro, 3041 Montavesta Road, was present. He said that that he lives within the area of the Lansdowne Merrick Neighborhood Association, and he is in support of the neighborhood's concerns. He then said that he frequently drives on Chinoe Road to bypass Tates Creek Road, and he believes that if this proposal is approved the traffic will only increase.

Petitioners Rebuttal – The Chair asked if the applicant's representative desired to rebut any of the previous comments. Mr. Cornett said that he understood the concerns of the neighborhood; and as for the missing trees along Chinoe Road, Kroger is a tenant of the shopping center, not the property owner. He then said that, as a tenant, Kroger can make a commitment to work with the shopping center and developer to replace those trees, especially if those trees are required.

Mr. Cornett said that the interpretation of the Kroger's information was misconstrued. He said that 40 percent of people who purchased gas, also purchased groceries from Kroger on the same day. He then said that they are not saying that there will be an increase of 60 percent in customer sales when a fuel center is added.

Mr. Cornett then said that as far as the stability of an underground tank, geotechnical borings provide samples of the soil that are then analyzed. He added that the depth of the hole and the bearing pressure of that hole are also



analyzed. He said that the tank itself is placed in ballasts to make sure an empty tank does not move or float to the surface when wet. He noted that there will be monitoring wells installed in the tank, as well.

Mr. Cornett stated that he could not speak to the possible increase in crime for this area or to the existing traffic concerns for Chinoe Road or Creekwood Drive. He said that a traffic study is not required when amending a development plan in a B-6P zone. He noted that the Bates Creek Shopping Center and the Chinoe Road Shopping Center are also located in a B-6P zone, and a gas station is a permitted use in this zone.

Citizen Rebuttal – The Chair asked if anyone in the audience desired to rebut any of the previous comments. Mr. Fox said that it was mentioned that 40 percent of people who purchase gasoline will also shop inside the Kroger store. He then said that to him this means that the number of trips into the shopping center will increase. He indicated that if a customer does not purchase gas on the same day as their groceries, at some point that person will be back on a different day, thereby increasing the traffic in the shopping center.

Mr. Fox asked that the Planning Commission members visit this area, look at the site, and then at the surrounding homes at different times of the day before making a decision.

Staff Rebuttal – The Chair asked if the staff desired to rebut any of the previous comments. Mr. Taylor replied in the negative.

Planning Commission Questions and Comments – Mr. Penn asked for clarification to recommended condition #12, and what the original restrictions were that were placed on the development plan. Mr. Taylor said that originally there were 8 restrictions, noting that 5 of those restrictions will result in items that need to be shown on the development plan.

Mr. Owens asked if this proposal is for an amended development plan. Mr. Taylor replied affirmatively. Mr. Owens then asked, if the applicant elected not to make any changes to the original development plan, if that development plan is still viable. Mr. Taylor said that Article 21-4(f) of the Zoning Ordinance relates to the timing restrictions for a final development plan. He then said that a final development plan must be submitted within two years of the Commission's approval of a preliminary plan, and building permits must be pulled or obtained within 5 years of the Commission's approval. If that time should expire, the applicant could request a reapproval of the plan.

Mr. Taylor said that the applicant had two options: they could have submitted the original development plan, requesting a reapproval; or submit an amended development plan proposing these changes.

Mr. Owens asked Jeff Neal, Division of Traffic Engineering, to speak to the concerns mentioned earlier. Mr. Neal said that his staff was focusing on problems with the internal circulation. He then said that they have been working with the developer to improve the entrance into the shopping center, as well as with the traffic movement inside the parking lot. He noted that they did not concentrate their efforts outside the shopping center development.

Mr. Owens said that it was indicated that Chinoe Road carries 9,000 trips per day, and asked if the staff had any information on the traffic counts for this area. Mr. Neal indicated that he did not have that information handy, but he could quickly obtain the requested information for the Commission.

Ms. Beatty asked for clarification on the original development plan approval in 1981. Mr. Taylor said that there was not a gas station proposed on the 1981 development plan. He said that in 2001, an amended development plan was submitted showing the gas station, which was approved by the Commission and certified in 2002.

Ms. Beatty said that the submitted development plan is a modification of what was approved in 2002. Mr. Taylor replied affirmatively, and said that this proposal modifies the development plan from 2002. He then said that the applicant could have pulled permits and constructed the gas station based upon the 2002 development plan. The applicant chose not to do that, and instead submitted this proposed development plan.

Ms. Beatty said that if the applicant had not modified the development, they could have asked for a reapproval of the 2002 development plan. Mr. Taylor said that was correct, noting that submittal would have gone through the same process as this plan amendment.

Ms. Beatty asked if it required notifying the residents of the area. Mr. Taylor said that under the Zoning Ordinance notification is not required for a new commercial development plan submittal or for a reapproval.

Ms. Roche-Phillips asked Tim Queary, Urban Forester, to speak to the landscape screening and street trees along Chinoe Road, such as the Bradford Pear. Mr. Queary said that under Article 18 of the Zoning Ordinance, landscaping and trees are required on a development. He then said that since these trees are not located in a public right-of-way, they are not considered street trees. He added that the Bradford Pear tree is no longer an acceptable species to use for street trees.

Ms. Roche-Phillips then asked who would be responsible for ensuring that the development is in compliance. Mr. Queary said that the Division of Building Inspection would review the current landscape plan for compliance; and if any changes are needed those would be addressed as permits are considered.

Ms. Roche-Phillips asked if there is a zone-to-zone screening requirement on this development. Mr. Taylor said that the zone-to-zone requirement is for the rear of the property that abuts the adjacent zone. He then said that there is no zone-to-zone requirement for Chinoe Road or Creekwood Drive. Ms. Roche-Phillips confirmed that if there is any type of landscape being provided it is through a requirement. Mr. Taylor replied affirmatively, noting that it is through the required vehicular use landscape screening.

Mr. Wilson said that earlier in the meeting Mr. Bill Wilson (1065 Chinoe Road) had made a presentation to the Commission. He noted that Bill Wilson's full name is William H. Wilson, which is also his name, and just for the record they are of no relation to each other. Mr. Sallee replied that the staff would include this information in the official minutes. Mr. Cravens said that was duly noted for the record.

Closing Comments - Mr. Penn said that the screening permitted for this use needs to be understood before moving on to the issue of the canopy height. He noted that the applicant has had 9 years to build the gas station and now the amended development plan allows the Commission to reconsider whether or not the 2002 approval was an appropriate decision.

Mr. Brewer said that this is a neighborhood shopping center, and the neighborhood has spoken out against this request. He then said that he has driven this area many times and there is a serious traffic and safety issue in this area. It is his belief that a gas station is not needed at this location.

Action - A motion was made by Mr. Brewer to disapprove DP 2011-96: CHINOE VILLAGE SHOPPING CENTER (AMD).

Discussion of Motion - Ms. Boland directed the Commission's attention to Article 21-4(d) of the Zoning Ordinance and noted that this standard reads:

*"The Commission may modify or disapprove the development plan if it finds the plan does not comply with the requirements of the Zoning Ordinance, and when applicable, the Land Subdivision Regulations or if it finds there are existing or potential flood, drainage, traffic, topographic, health, safety, nuisance or other similar problems relating to the development of the subject property. In addition to these items, development plans which seek to amend the original development plan or its approved amendments shall also be subject to the provisions of Article 21-7(e) herein below. Reasons for action of postponement or disapproval shall be fully incorporated in the Commission's minutes."*

Ms. Boland said that any plan seeking to amend the original development plan is subject to this same standard of review. She then said that the Commission will need to make it clear in their action as to why the Commission's findings support any disapproval request.

Mr. Brewer asked if the motion on the floor needed to be amended to specifically state reasons. Ms. Boland said that in Mr. Brewer's previous comment, issues with traffic, safety and possible nuisance were mentioned and could be considered as findings. She noted that the minutes for this case must be very clear as required by the Zoning Ordinance to reflect the Commission's action.

Action – An amended motion was made by Mr. Brewer, to disapprove DP 2011-96: CHINOE VILLAGE SHOPPING CENTER (AMD), for the reasons previously stated. The motion was seconded by Mr. Penn.

Discussion of Motion – Ms. Roche-Phillips said that this is not a land use issue because gas stations are a permitted use in the B-6P zone. She said that Planning Commission denial of this development plan would in effect be a denial of that permitted land use, and she doesn't understand how that could be allowed. She said that the Commission should provide for the neighbors through additional screening to reduce the impact from this proposal, as this use is permitted in this zone.

Mr. Owens asked Mr. Brewer if, before the motion is acted upon Mr. Neal could speak to the information that he had found. Mr. Brewer said he had no objections.

Mr. Neal said that it has been confirmed that the traffic volume on Chinoe Road is a little over 9,000 trips per day. He then said that based upon a 10-pump gas station, it is estimated that 900 daily vehicle trips would be going into the shopping center. Mr. Cravens asked if that data is an appreciable increase. Mr. Neal said that without seeing the site, it is difficult to determine, but ordinarily, that will be a noticeable increase. He added that the internal circulation of the shopping center will be improved, which will help with the internal traffic flow.

Mr. Paulsen said that it sounds like there would be a 10 percent increase and asked if this is high volume for a road like Chinoe Road. Mr. Neal said that most of this increase will be from existing traffic on Chinoe Road. He then said that people will not drive miles out of their way just for a gas station. This will be more of a community gas station for the area. It will not cause appreciable increase on Chinoe Road.

Mr. Paulsen said that there will be an addition of about 900 trips and the staff is not sure whether those cars would be coming from inside or outside the neighborhood. He asked if Chinoe Road has 10,000 trips per day, if that is considered high compared to other roads in Lexington. Mr. Neal said that that is reasonable volume for a two-lane road, noting that Chinoe Road is well under its capacity.

Mr. Cravens asked about the level of service for Chinoe Road is. Mr. Neal said that he did not know that information.

Ms. Blanton clarified that the 900 additional trips anticipated are from vehicles already traveling this road. Mr. Neal replied affirmatively.

Ms. Copeland said that people will come to this Kroger to use their points, and it will attract customers between Richmond Road and Harrodsburg Road. She then said that this will be a magnet for people who do not normally shop at this Kroger store. Mr. Neal said that there may be a certain percentage of people who drive that far to redeem their points.

Ms. Beatty asked if there was any discussion to the issues at hand when this was approved by the Planning Commission in 2002. Mr. Taylor said that he did not have those minutes in the plan file. Ms. Beatty said that the area of Chinoe Road has not changed that much in 10 years, and she finds it hard to believe that there was no discussion at that time on these issues. Mr. Cravens said that Kroger has not been at this location for 10 years. Mr. Cornett said that in 2002 the store was changed from Winn Dixie to Kroger.

Mr. Penn said that he is concerned with the fact that Kroger has had 9 years to build this gas station. He then said that the same people who lived in the area 9 years ago are probably still there. The Commission has received a letter from the neighborhood Council member, and the neighbors are present stating that they don't need or want this. He said that it comes down to whether the profit center of Kroger outweighs the concerns of the neighborhood. He then said that if this was an issue with Kroger, they would not have allowed the development plan to expire, and they would not have submitted an amended development plan. He believed that the community's concern outweighs Kroger's needs. With that being said, he would like more information on whether or not this is a permitted use in the B-6P zone and if a ministerial action is required by the Commission.

Mr. Berkley said that he understands that a gas station is a permitted use in the B-6P zone; but it seems premature without knowing the answers to the traffic issue or sight distance concerns. He then said that he frequently visits this shopping center so he knows the existing situation. He added that he could not make a decision in approving this request without that information.

Petitioners Request - Mr. Cornett asked if they could postpone this request in order to find out the answers to the neighbors' and Commission's questions. He then said that they can submit a redesign of the development plan, and provide a traffic study. The staff could also gather the past Planning Commission minutes for this location.

Mr. Cravens said that there is a motion on the floor that would need to be withdrawn before this item could be postponed. Mr. Cornett said that they would rather postpone this item than have the Commission disapprove the request. He then said that this is a permitted use in this zone, and instead of starting over, they would rather address the concerns.

Commission Discussion - Mr. Cravens said that this request has a deadline of January 29, 2012 for Commission action. Ms. Boland verified that the Commission must either approve or disapprove this request by January 29, 2012, but the applicant can request a postponement after that date. Mr. Cravens asked if Mr. Brewer would like to withdraw the motion on the floor. Mr. Brewer said that he is comfortable with his motion for disapproval and for moving forward; but should the Commission wish to have additional time for more information, that would be fine.

Ms. Roche-Phillips said that this is a permitted use in the B-6P zone, and the Commission owes it to the applicant to hear all the information. She then said that approval of a development plan is ministerial and the only way to deny a request is if there are issues associated with it. The applicant is proposing to postpone this request to resolve those issues and the Commission owes it to the applicant to withdraw the motion for disapproval and contemplate a postponement. Mr. Brewer said that he appreciates Ms. Roche-Phillips' concerns; but according to the Law Department, the issues that were previously mentioned hold merit. Mr. Cravens said that he agreed. Mr. Brewer said that he does not believe there is a legal or ministerial issue; but if the majority of the Commission believes this request should be postponed for more information, then he is fine with withdrawing his motion.

Mr. Cravens said that this is not as ministerial as one would think; it is an amendment to a development plan. Ms. Boland said that this request is semi-ministerial in nature and the Commission must determine if the development plan meets all the Zoning Ordinance requirements. If the Commission should find that the traffic, the health or an insurmountable nuisance makes this site inappropriate for this use, legally it would be supported by the standards in the Ordinance.

Mr. Owens noted that he agrees with Ms. Roche-Phillips, allowing the applicant the opportunity to resolve these issues. He then said that he believes that most of the traffic is already traveling Chinooe Road, and this gas station will be convenient for the entire neighborhood. He appreciates the concerns of the audience members, but the applicant has made it known that they would find another way to resolve this. He agrees with the recommendation of postponement to a future meeting. This will allow time for the applicant to work with the neighbors to address their concerns.

Ms. Copeland asked how many gas dispensers were proposed in 2002. Mr. Taylor said that the 2002 development plan showed 3 pumps with 6 nozzles. Ms. Copeland said that when the original gas station was approved, it was based upon a smaller scale. Mr. Taylor replied affirmatively. Ms. Copeland said that if this plan could be redesigned to fit as a neighborhood gas station rather than regional one, then she might be more supportive of this. As the development plan is proposed, she could not support the request. She added that more information needs to be shown on the plan, such as height of canopy, light foot candles and so forth.

Mr. Penn said that if Mr. Brewer withdraws his motion, he would withdraw his second; but he noted that the neighbors have shown up and voiced their concerns. He then said that a decision needs to be made on whether or not the Commission wants this gas station here. He does not want to start this process over again and the Commission owes it to the neighbors who have shown up to render a decision.

Mr. Brewer said that a gas station is permitted in this zone and permitted by the regulations; however, the Commission has a responsibility say whether it is inappropriate. He believes the Commission should go forward with the motion for disapproval.

Mr. Cravens said that he is familiar with the shopping center, and this gas station will be located behind a building. He had a hard time understanding how the gas station will be seen from Chinooe Road. He said that the applicant could build another building at this same location on the site, if they wanted. He then said that with the concessions Kroger has made, they are trying to work with the neighborhood.

The vote on the motion failed 5-6 (Cravens, Paulsen, Roche-Phillips, Owens, Blanton and Wilson opposed)

Action - A motion was made by Ms. Roche-Phillips, seconded by Mr. Wilson, to postpone DP 2011-96: CHINOOE VILLAGE SHOPPING CENTER (AMD).

Amendment to Motion - Ms. Boland suggested that the Commission make a motion to "continue" this item to a future meeting. Ms. Roche-Phillips and Mr. Wilson both agreed.

Discussion - Mr. Cravens noted Mr. Paulsen's claim that he voted incorrectly with the original motion for disapproval. Ms. Boland asked if the prior motion could be shown and redone to have it properly on the record. Mr. Saltee said that the voting could be read aloud, but not displayed on the overhead projector.

Mr. Cravens noted that Ms. Roche-Phillips made a motion, still on the floor, which had a second. Ms. Boland said that the vote on the original motion was incorrectly reported. Ms. Roche-Phillips asked if she needed to amend her motion. Ms. Boland said that the vote was displayed earlier on the overhead and could be again. Mr. Saltee said that the staff could read the past vote to the Commission, but it could not be shown on the overhead.

Point of Order - Mr. Wilson said that there is a motion on the floor that was seconded, which kills the previous motion made. He then said that he is not familiar with parliamentary rules, but he does know that the current motion trumps the original motion, and no revote can be taken. This is a point of order for parliamentary procedure. Mr. Wilson said that Commission must address the current motion on the floor, and if that motion for postponement fails, then the original motion could be addressed.

Mr. Cravens said that the motion on the floor must be addressed; and should it fail, then the original action for disapproval stands.

Mr. Brewer said that according to Ms. Boland, the Commission can redo the vote, and that is what he suggested.

Mr. Cravens asked for guidance from the Law Department. Ms. Boland said that that Commission could do this one of two ways. She said that the Commission could act on the motion to continue this item to a future meeting; should it fail, then what was the majority decision under the previous record, move that that motion be

reconsidered, at which time the vote can be corrected. She said that she is concerned with the votes being correctly documented, but it would be up to the Chair.

Ruling of the Chair - Mr. Cravens said that he is ruling in favor of Mr. Wilson. He said that there is a motion on the floor to continue this item to a future meeting. Mr. King said that the next meetings are January 12, 2012 or February 9, 2012. Mr. Cornett agreed to continue this item to the February 9, 2012, Planning Commission meeting.

Discussion - Mr. Brewer said that if the original motion was correctly recorded by the members, the second motion would not be on the table, and believed that the original motion should be redone. Mr. Wilson said that this was not an issue on whether or not you are for or against the plan, but is more of an issue of parliamentary procedure, noting that if Mr. Brewer's comments were valid, that means anyone could claim that they voted incorrectly and change their vote at any time. The best way to address this issue is to vote down the motion on the floor, and then make a new motion. He said that what is being suggested here simply could not be done.

Mr. Cravens said that there is a motion on the floor to continue this item to the February 9, 2012, Planning Commission meeting.

Action - The motion carried 7-4 (Copeland, Penn, Brewer and Paulsen opposed)

*Note: Chairman Cravens declared a brief recess at 3:35 p.m. The meeting reconvened at 3:45 p.m.*

- b. DP 2011-98: NEWMARKET PROPERTY, PHASE 1, UNIT 9 (1/29/12)\* - located at 1281 Deer Haven Lane (a portion of). (Council District 12) **(EA Partners)**

Note: This plan requires the posting of a sign and an affidavit of such.

The Subdivision Committee Recommended: **Postponement.** There were questions concerning the extension of Passage Mound Lane.

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Identify left turn lane information onto Passage Mound Lane from Polo Club Boulevard.
9. Clarify topography information.
10. Addition of existing tree canopy.
11. Addition of all proposed and existing easements, including storm water easements.
12. Correct note #4.
13. Delete note #10.
14. Discuss continuing Passage Mound Lane to the adjacent property.
15. Discuss cross-section and width proposed for Passage Mound Lane.

Staff Presentation – Ms. Gallt identified the plan on the Agenda, noting that the subject property is located on a portion of 1281 Deer Haven Lane. She said that the Technical Committee and Staff recommended postponement of this item to the Subdivision Committee due to concerns with the lack of an extension of Passage Mound Lane. She then said that the day of the Subdivision Committee meeting, the applicant submitted a revised development plan to the staff; however, due to the timing of the submittal, the staff was not able to review the revised plan. She said that since the Subdivision Committee meeting, the staff has reviewed the revised submittal, and the applicant has addressed some of the deficiencies and issues previously identified.

Ms. Gallt directed the Commission's attention to the zone map, and briefly described the location of the subject property. She noted that Interstate 75 is to the east and Deer Haven Lane is to the west. She illustrated the location of the Newmarket Property and Polo Club Boulevard, as well as Passage Mound Lane. She said that Passage Mound Lane will cross Polo Club Boulevard, providing access to the subject property.

Ms. Gallt said that the purpose of this request is to subdivide the property into two lots. She said that the one lot will be purchased by Fayette County Public Schools and the additional lot will be designated as a greenway system, which is part of the regional detention basin.

In conclusion, Ms. Gallt said that, based upon the revised submittal, the staff is now recommending approval, subject to the following requirements:

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\* - Denotes date by which Commission must either approve or disapprove plan.

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Division of Fire's approval of emergency access and fire hydrant locations.
- ~~8. Identify left turn lane information onto Passage Mound Lane from Polo Club Boulevard.~~
- ~~9. Clarify topography information.~~
8. ~~10. Addition of Denote conditional zoning restrictions for existing tree canopy adjacent to I-75.~~
- ~~11. Addition of all proposed and existing easements, including storm water easements.~~
- ~~12. Correct note #4.~~
- ~~13. Delete note #10.~~
- ~~14. Discuss continuing Passage Mound Lane to the adjacent property.~~
9. ~~15. Discuss-Resolve the transition of the cross-sections and width proposed for Passage Mound Lane.~~
10. Provided the Planning Commission makes a finding that the plan complies with the provisions of the EAMP.

EAMP Compliance Report – Mr. Martin directed the Commission's attention to the previously distributed EAMP Compliance Report, and said that the applicant is proposing a 15-acre elementary school site and an 8.5-acre greenway lot. The site is situated between Polo Club Boulevard and I-75. He then said that the proposed elementary school will provide an important public facility for that area of our community, adding that it has been recognized in the Expansion Area Master Plan, as well as the 2007 Comprehensive Plan. Although a location was not specifically identified in the EAMP, the 2007 Comprehensive Plan does recommend an elementary school in this general vicinity. The location of the school is also dependent on the school system's ability to negotiate with the land owner.

Mr. Martin said that there is a requirement for a Community Design Element; but because there is no residential development on this site, that requirement is not necessary. He then said that there will be pedestrian connections provided through the greenway, sidewalks and the boulevard bikeway lane. These pedestrian connections will continue as this area is developed. He said that Passage Mound Lane will be constructed in phases, with the first phase providing access to the school. He then said that the Division of Traffic Engineering was concerned with the width of the street, and recommended that it be built to collector street standards. He noted that condition #9 will resolve the transition of the construction of Passage Mound Lane. He said that it is the intent that Passage Mound Lane will serve the school, and residential development.

Mr. Martin said that, in terms of the Infrastructure Element, Polo Club Boulevard has been constructed in this area, as well as the required sewer lines, which will serve the entire subject property. He then said that the stormwater system on the subject property is part of the overall regional system for the Expansion Area, and the Stormwater Management Plan had identified it as being a permanent pool. However, due to the school's safety and liability concerns, this pool will be redesigned to function as a dry detention basin and not a permanent pool. This design change will not affect the function for the overall regional stormwater management system.

In conclusion, Mr. Martin said that the staff finds the final development plan is in compliance with the EAMP for the following reasons:

1. Although there is no proposed residential development on this property, the proposed elementary school does provide a public facility land use that complies with the intent of the EAMP and 2007 Comprehensive Plan.
2. Polo Club Boulevard and the sanitary sewer transmission lines have been constructed in this area, and major elements of the required regional stormwater management plan will be constructed with this plan.
3. The plan is in compliance with the Community Design Element of the EAMP, providing a section of the required greenway, and will provide portions of the pedestrian system that will enhance existing and future neighborhood identity while providing connectivity.

Representation – Dick Murphy, attorney, along with Rory Kahly (EA Partners), Chas Hite and Ralph Ruschell were present representing the Clark Family. He noted that they had submitted the affidavit of the sign posting to the staff for the record.

Mr. Murphy said that since the Subdivision Committee meeting, they had submitted a revised development plan to the staff, showing that the width of the pavement at the front of the school has increased from 31' to 36'. The Division of Traffic Engineering is agreeable to this increase, and they will continue to work with the Division of Traffic Engineering with regard to the transition of Passage Mound Lane (condition #9).

In conclusion, Mr. Murphy said that they are in agreement with the revised recommendations and requested approval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Ms. Blanton, to approve DP 2011-98: NEWMARKET PROPERTY, PHASE 1, UNIT 9, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Denote conditional zoning restrictions for existing tree canopy adjacent to I-75.
9. Resolve the transition of the cross-sections for Passage Mound Lane.
10. Provided the Planning Commission makes a finding that the plan complies with the provisions of the EAMP.

The Final Development Plan is in compliance with the EAMP for the following reasons:

1. Although there is no proposed residential development on this property, the proposed elementary school does provide a public facility land use that complies with the intent of the EAMP and 2007 Comprehensive Plan.
2. Polo Club Boulevard and the sanitary sewer transmission lines have been constructed in this area, and major elements of the required regional stormwater management plan will be constructed with this plan.
3. The plan is in compliance with the Community Design Element of the EAMP, providing a section of the required greenway, and will provide portions of the pedestrian system that will enhance existing and future neighborhood identity while providing connectivity.

The motion was seconded by Ms. Beatty, and carried 11-0.

Ms. Boland confirmed that the motion included the Planning Commission making a finding that the plan complies with the provisions of the EAMP. Mr. Saltee replied affirmatively. Mr. Cravens concurred.

*Note: Ms. Copeland departed at this time. Mr. Cravens asked if the Commission wished to consider the Performance Bonds and Letter of Credit while the staff prepares for the next time.*

**C. PERFORMANCE BONDS AND LETTERS OF CREDIT** – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action - A motion was made by Mr. Owens, seconded by Mr. Wilson, and carried 10-0 (Copeland absent) to approve the release and call of bonds as detailed in the memorandum dated December 8, 2011, from Ron St. Clair, Division of Engineering.

*Note: Ms. Copeland arrived at this time.*

## **B. DISCUSSION ITEMS (cont.) –**

### **1. DEVELOPMENT PLAN**

- c. DP 2011-103: ANGLIANA AVENUE AND A.G. MCGREGOR SUBDIVISION (AMD) (2/21/12)\* - located at 525 Angliana Avenue. (Council District 2) **(Brandstetter Carroll)**

Note: The purpose of this amendment is to revise the building and parking layout.

The Subdivision Committee Recommended: Postponement. There were questions regarding the extent of the encroachment of this residential development into an adjacent I-2 zone.

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Denote 2' contour lines on plan.
9. Denote building dimensions.
10. Addition of typical parking spaces and aisle dimensions.
11. Denote sidewalk dimensions.
12. Denote building height in feet.

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\* - Denotes date by which Commission must either approve or disapprove plan.

13. Correct note #3.
14. Correct purpose of amendment note to indicate Lot 1 only.
15. Denote proposed and existing easements.
16. Clarify parking to reflect number of apartment & townhome bedrooms.
17. Denote construction access location on plan.
18. Resolve ability to meet tree canopy requirements.
19. Denote storm water detention.
20. Review by Technical Committee prior to certification.
21. Discuss encroachment into adjoining I-2 zone.
22. Discuss emergency access to Hamm Alley.
23. Discuss tree protection area.

Staff Presentation – Mr. Martin identified the plan on the Agenda, and noted that Phase 1 of this development has been constructed. The applicant is now requesting to amend the approved development for Lot 1.

Mr. Martin directed the Commission's attention to the rendering and oriented them to the surrounding street system, which includes Curry Avenue, Angliana Avenue and Hamm Alley. He then said that the access into this site will be located off Angliana Avenue, adding that the applicant has initiated the process of closing Hamm Alley, which would revert it to an access easement.

Mr. Martin said that the purpose of this request is to amend the building and parking layout for Lot 1. He said that the applicant is proposing 7 buildings with a total of 148 units, and 320 bedrooms. He then said that the proposal requires 288 on-site parking spaces. The applicant is proposing 325. The buildings are to be three-stories in height with a maximum floor area of 182,931 square feet. He said that the applicant has amended the development plan by increasing the number of units, but decreasing the number of bedrooms by 88. By reducing the number of proposed bedrooms, the required parking was also reduced by 49 spaces.

Mr. Martin said that the Subdivision Committee had recommended postponement of this plan amendment, due to questions regarding the extent of the encroachment of the maintenance building into the adjacent I-2 zone along Hamm Alley. He then said that since the Subdivision Committee meeting, the applicant had submitted a revised Development Plan that shows the maintenance building being relocated. He said that the revised submission also addresses many of the deficiencies and some of the discussion issues previously identified by the Subdivision Committee, such as providing an emergency access to Hamm Alley. He said that, with the applicant revising the layout of the development, the emergency access to Hamm Alley is not necessary anymore. However, the applicant has gone ahead and provided this access with the agreement of the Division of Fire. Mr. Martin noted that there will be public improvements made to Angliana Avenue including pedestrian safety features, and said that these improvements were previously approved when the Commission approved the overall development of Phase 1.

Mr. Martin directed the Commission's attention to the revised conditions, and said that the staff is recommending approval of the applicant's request, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
- ~~8. Denote 2' contour lines on plan.~~
8. Denote building dimensions (not envelopes).
- ~~10. Addition of typical parking spaces and aisle dimensions.~~
- ~~11. Denote sidewalk dimensions.~~
- ~~12. Denote building height in feet.~~
- ~~9. 13. Correct note #3.~~
- ~~10. 14. Correct purpose of amendment note to indicate Lot 1 only.~~
- ~~15. Denote proposed and existing easements.~~
- ~~16. Clarify parking to reflect number of apartment & townhome bedrooms.~~
- ~~17. Denote construction access location on plan.~~
- ~~18. Resolve ability to meet tree canopy requirements.~~
- ~~19. Denote storm water detention.~~
11. 20. Review by Technical Committee prior to certification.
- ~~21. Discuss encroachment into adjoining I-2 zone.~~ Resolve proposed use of maintenance building in the I-2 zone.
- ~~22. Discuss emergency access to Hamm Alley.~~
- ~~12. 23. Discuss tree protection area. Identify extent of tree protection area on plan.~~



Planning Commission Questions – Mr. Penn asked, with the original approval of Phase 1, if Hamm Alley was to remain open to allow access to the railroad. Mr. Martin said that Hamm Alley did not extend to the railroad, and it was created to serve a fire hydrant at the rear of the property. Mr. Penn then asked if the improvements to Angliana Avenue include the bike lanes and curbs. Mr. Martin replied affirmatively.

Representation – Charlie Snider, Brandstetter Carroll, was present representing the applicant, and said that they are in agreement with the revised recommendations and requested approval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Ms. Blanton, to approve DP 2011-103: ANGLIANA AVENUE AND A.G. MCGREGOR SUBDIVISION (AMD), subject to the conditions as presented by the staff.

Mr. Martin noted that the revised conditions were numbered incorrectly and there are 13 conditions listed on the handout.

Ms. Blanton amended her motion to approve DP 2011-103: ANGLIANA AVENUE AND A.G. MCGREGOR SUBDIVISION (AMD), subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Denote building dimensions (not envelopes).
9. Correct note #3.
10. Correct purpose of amendment note to indicate Lot 1 only.
11. Review by Technical Committee prior to certification.
12. Resolve proposed use of maintenance building in the I-2 zone.
13. Identify extent of tree protection area on plan.

The motion was seconded by Mr. Paulsen, and carried 11-0.

**V. COMMISSION ITEMS** – The Chair will announce that any item a Commission member would like to present will be heard at this time.

**A. APPOINTMENT OF NOMINATING COMMITTEE FOR COMMISSION OFFICERS** – This is a by-law requirement for the first official meeting in December each year, and the election of Officers is required at the first meeting in January each year.

The Chair stated that he would like to appoint Commission members Carla Blanton, Patrick Brewer and Derek Paulsen to the nominating committee for next year's Commission officers. He asked that they be prepared to present a slate of officers at the first Planning Commission meeting in January, 2012.

**B. ANNUAL REPORT FROM PURCHASE OF DEVELOPMENT RIGHTS PROGRAM** – The Commission will hear from Mr. Billy Van Pelt, who will present the required Annual Report from the Rural Land Management Board.

Mr. Van Pelt distributed the necessary information for the annual PDR report to the Commission members, as required by the Zoning Ordinance. He said that the PDR program currently has over 26,100.00 acres participating in this program, which is 52.33% of the goal of 50,000 acres by 2020. He noted that this information is based upon Round 10 data.

Mr. Van Pelt said that, in reviewing the annual report, there are 231 total farms participating in the PDR Program. Out of the 231 farms, there are 125 equine farms, 93 general agriculture farms, 13 other types of farms and 38 donated conservation easements. Mr. Van Pelt directed the Commission's attention to Round 9, and noted the number of conservation easements acquired through donations and purchases, as well as those that were withdrawn. He said that Round 10 currently is making offers to purchase approximately 562 acres for conservation easements; however, there was a withdrawal of about 333 acres due to the offer being too low. Mr. Van Pelt then said that they are projecting 36 applications that will acquire 3,000 acres for Round 11 by the end of 2013.

Mr. Van Pelt directed the Commission's attention to the schematic of Fayette County, and noted that the areas that are under contract to close or have been acquired through either purchase or donations.

Planning Commission Questions – Mr. Wilson said that the goal of the PDR Programs is to acquire 50,000 acres, and asked what the projected date is. Mr. Van Pelt said that this goal will take place by the year 2020. Mr. Wilson then asked, if that

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\* - Denotes date by which Commission must either approve or disapprove plan.

project goal is not reached by the year 2020, if the time frame can be extended. Mr. Van Pelt said that the 50,000 acres is a goal and not necessarily a required amount. He said that the idea is to acquire 50,000 acres, but the Commission could extend the time through the next Comprehensive Plan process.

Ms. Blanton asked if the staff foresees that the remaining 50% of the goal will be harder to attain. Mr. Van Pelt said that the PDR Program survives on annual funds granted by the Urban County Council, funds awarded through the Farm and Ranch Land Protection Program (FRPP) and the Kentucky Department of Agriculture to help in purchasing these farms. He then said that there is a commitment to saving Fayette County farm land. They will continue to work at obtaining donations, which has saved the Lexington-Fayette Urban County Government 4.4 millions.

Mr. Penn asked for an explanation of the point system and how these farms are ranked. Mr. Van Pelt briefly explained that the PDR program is a voluntary program; and to participate, the applicants are considered based on a LESA ranking system, which prioritizes the order of acquisitions. He then said that the LESA ranking system is weighted on specific values, which are assigned to a farm. The farm that receives the most points, regardless of ownership, will be moved to the top of the ranking list. He noted that there is an opportunity for a farm to be given more points, such as increasing the acreage of the farm or soil quality, which will further raise the points. He said that the order of acquisition is followed as the approved budget allows.

Mr. Penn asked what negatives are associated with the ranking system. Mr. Van Pelt said that not all points are good points. He then said that if easements are touching the Urban Service boundary, it would be considered a negative point. If a farm is within a mile of the Urban Service Area or near an interstate interchange, that farm will receive negative points. He said that the Urban Service Area will expand in the future and this program does allow for urban growth.

Note: Mr. Paulsen departed at this time.

- B. ANNUAL REPORT FOR THE COURTHOUSE AREA** – The Commission will hear from Mr. Billy Van Pelt, who will present the required Annual Report from the Courthouse Area Design Review Board.

Mr. Van Pelt directed the Commission's attention to the PowerPoint presentation for the Annual Report for the Courthouse Area, and explained the location and boundary of the Courthouse Business District, noting that the design overlay district currently has 90 parcels.

Mr. Van Pelt stated that the Courthouse Area Design Review Board was established by Ordinance in August, 2001, and the Board meets quarterly or as needed through the year. He brief noted the Board members consist of Michael Meuser, Chair, Harry Richart; Vice Chair, Michael Speaks; Darren Teodoro and Kevin Atkins.

Mr. Van Pelt stated that the Courthouse Area Design Review Board granted 4 approvals in 2011, and there were 2 approvals made by the Design Review Officer, as well as 1 Preliminary Board Review. He noted that over the last 10 years the Board has granted 45 approvals, and there have been 28 approvals made by Design Review Officer. He displayed several photographs of recent changes to structures in the Courthouse Area, and gave a brief description of each. Mr. Van Pelt said that on January 24, 2012, the Design Excellence Task Force will report to the Council with proposed changes to the Courthouse Area Design process.

- VI. STAFF ITEMS** – The Chair will announce that any item a Staff member would like to present will be heard at this time.

Mr. Sallee referenced a memorandum from he and Senior Planner Traci Wade, distributed earlier, and noted that the staff will request that the Planning Commission initiate a text amendment to Articles 8 and 12 for various modifications to the Neighborhood Business (B-1) zone at the December 15, 2011, meeting.

- VII. AUDIENCE ITEMS** – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will NOT be heard are those requiring the Commission's formal action, such as zoning items for early rehearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.

**VIII. NEXT MEETING DATES**

Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building) .....	December 14, 2011
<b>Zoning Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers .....	<b>December 15, 2011</b>
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building) .....	January 5, 2012
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building).....	January 5, 2012
<b>Subdivision Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>January 12, 2012</b>

- IX. ADJOURNMENT** - There being no further business, a motion was made to adjourn the meeting at 4:20 PM.

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Mike Cravens, Chair

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Lynn Roche-Phillips, Secretary